Essay on the Common Law of Ruanda

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Preface

101 563 Beyond the eastern shore of Lake Kivu extends a country of high hills called Ruanda. Nestling in banana groves, innumerable huts cling to the hillside, their smoke rising to the sky, and on the summits the brisk wind sways the pink grasses of the pastures where long-horned cattle graze. The exceptionally dense population con- [161] sists of about 3,000,000 Bahutu of Bantu origin who are dominated by some tens of thousands of Batutsi, Hamitic shepherds who have probably come down from the Ethiopian plateaus. Finally, here and there, Batwa pygmoids, potters and hunters, live apart from the other natives who despise them.

183 671 Europeans who first studied the customs of the country discovered to their surprise that they showed a number of points in common with our feudalism. The tenure of land and of cattle as well as [643] the dependence of persons are under a [4] strict regulation which the ruler of Ruanda has the absolute power to modify but which has, in fact, remained unchanged throughout the ages.

177 183 Our occupation has obviously had the effect of modifying the customs in many ways. For example, we could not approve of the brutal evictions and attempts on life and liberty made in the name of the right of the strongest. Evangelization has also introduced into the heart of the native society notions of justice and gentleness which are very different from the natives' original conceptions. However, despite 177 the efforts of our civil servants and our missionaries to attack what is 183 most to be condemned in it, native customs still largely holds its 563 sway due to the influence of the great Batutsi chiefs, who are eager to maintain their authority intact, and also due to that of the sorcerers, toothsayers, rain makers, and many others, who attempt to maintain the traditional law by playing on the credulity and superstitious mind of the Banyarwanda [Banyaruanda] and thus protect their prestige and their revenues. In addition, while realizing the protection we give them in repressing arbitrary actions, the Bahutu submit to the changes we

177 183 563 have brought to their customs rather than truly adhere to them. This passive attitude is due to an inveterate fatalism which makes them bow before the undisputed master, the Mututsi, and also to the antiquity of custom which makes it as respectable as an almost divine institution.

671 As is the case in the Belgian Congo and generally in [5] Black Africa, the common law contains not only juridical rules applicable to persons, property, and society, it also contains religious and magic regulations, various recipes, etc. Such as it is, it forms a disparate yet solid whole which gives the solution to problems arising from the individual and collective life of the Banyarwanda.

671 184 563 The common law of Ruanda, applicable to a homogeneous population, is the same everywhere, except in the north on the frontier of Kivu and Uganda, where the authority of the Batutsi over the Bahutu could not assert itself as in the rest of the country. This independence has resulted in the substitution of the administration of the Bahutu clan and family chiefs for that of the Hamite officials.

114 Those who have known Ruanda and its people best are the members of the Society of Missionary Fathers of Africa. The Reverend Fathers Lupias, Schumacher, Arnoux, Pages, and Hurel have published, in the Anthropos and Congo reviews (among others) and in numerous monographs, elaborate studies on different aspects of the social, political, religious, and intellectual life of the Banyarwanda. The territorial governors Lenaerts and Sandrart have also brought fruitful contributions to the knowledge of Ruanda common law.

121 [125] Nevertheless, we do not believe that a more or less complete account of the customs of private and public law of Ruanda has ever been prepared. This is what we have modestly attempted to do in the present work by inserting observations gathered in a questionnaire set up especially to facilitate [6] the study of native law (1). We have

1. J. Vanhove, Questionnaire de Sociologie juridique, Brussels, printer Lesigne, 1939.

not been able to go into the details of all the institutions of which some, particularly those relative to cattle contracts, would alone require a whole volume.

124 But, in spite of the limited time we could devote to this account of the customs, we believe we have given the essential points

2. Administration of Justice and Social Conditions

428 In the families of those Barundi (Batussi, Bahutu, and Batwa) who do not hold an office, the eldest son (or daughter) of the first wife is the secular and religious principal heir of the father. He inherits (kuraga) the largest share of the available family property, while the mother and the other children each receive equal shares of the remaining property. If the mother [429] is already dead and the children still small, the eldest son as the principal heir is expected to provide for them. If a 428 Murundi dies without children and leaves a widow, his brothers 768 divide his property among them, and the widow returns to her 587 family. However, a widow with children becomes the wife of the brother nearest to the deceased (levirate), and she and her children remain in the same house as before. The family stays together until the children are married and set up their own families (No. 19, p. 285). According to von Langenn, only sons receive the inheritance; they then support the mother and sisters. If there are no sons, either the widow or the daughters, as the case may be, are the heirs.

The eldest son also inherits the religious and professional 428 attributes and skills of his father. If the father was a priest 463 (kiranga), sorcerer, medicine man (umufumu), or blacksmith 868 (umususi), etc., the eldest son becomes -- or remains -- in the same position or profession by inheriting from his father the insignia and tools, in addition to the expert training. Thus, certain professions remain the prerogative of certain families. If the mother is an expert of some sort, she will pass on her skills to her eldest daughter.

428 If someone dies without leaving a family or relatives, the mutwale of the district in question inherits the property (No. 19, p. 568). Since no written laws of any sort exist, all law is 671 customary law, tradition, and usage. Every adult Murundi is 563 familiar with these customs, and if anybody infringes them, it is regarded as a punishable violation of the law. Even the king considers himself bound by them in his relations to the Batussi and only under exceptional circumstances [93] does he disregard

563 the law. The law of the land is, of course, a "master's law"
●671 which favors the Batussi in all respects. In contrast, the Bahutu as bondsmen enjoy few privileges, and the Batwa are almost entirely without rights. The Batussi batwale often commit grave violations of the law, especially in their dealings with the Bahutu and Batwa without, however, being held responsible for such infractions. It is only the fear of vendetta that puts a restraint on their arbitrariness.

577 As is the case among all primitive people, the ethical concepts of the Barundi regarding what is right and wrong are elusive. Questions aimed in this direction either remain unanswered or the reply is simply: "We do not know" or "the headman says so" or "our parents, superiors, the king wish it that way," and similar answers (No. 19, p. 381). One never hears that "conscience" prescribes certain actions or that the ghosts, the manes, or the gods wish it that way. Whatever is said on this subject has probably been suggested by the questioners, especially the missionaries. In contrast, concrete concepts of
671 law are much clearer. They are chiefly based on conditions of ownership and on social conditions, and they define something as right or wrong depending on whether it benefits or impairs these conditions which have become traditional.

423 As has been mentioned above (p. 91) the king is, in principle, the sole owner of the entire land and fields and of all the cattle in the country. As described above (p. 86), the batwale and the lesser district chiefs -- almost always Batussi -- hold larger or smaller portions of this royal property in feudal tenure, and they, in turn, parcel out smaller portions for the use of those Batussi who are not officials or for the use of the Bahutu. Whatever these latter produce from the fields and from the cattle belongs to them by law as their own property after they have paid their tribute to the feudal lords. The huts and the courtyard which the Murundi has set up on the plot of land left to him are also his property. However, he can be driven from his house and field, for example, if he fails to pay his tribute or if he has committed murder of theft and also if the feudal lord wishes to put someone else in his place, either a

643 along the road, to the sanctimonious applause of his entourage. Once
661 he even tried his spear against one of his chief lieutenants. The latter had the audacity to evade the blow, pick up the weapon, and hurl it back at him with equal skill. The king managed to duck and showed no displeasure, at least on that day. He even congratulated the man for his boldness and courage and said that he was a "man" (umugabo).

This scene was enacted more than once during the same reign. The unfortunate men who served as targets to the spirited monarch, however, lacked sufficient audacity, and especially good fortune, to get away... with such amiable words.

Under the reign of the present monarch, Yuhi IV Musinga,
[687] from the time of his accession to the throne and prior to European penetration, the famous Ndamutsa drum often heralded one or several executions. Aside from the crime of sorcery it was enough to be denounced, rightly or wrongly, as having spoken poorly of the king and queen mother. Such crimes were punished on short order and briskly.

Public rumor has it that the young king tried his first gun shot on a madman. He hit him point blank.

The courtiers who were present at this murder scene emitted frenzied bravos to applaud the supreme skill of His Majesty.

[177] European influence and supervision alone managed to bring to an end this state of affairs and this kind of behavior, which in the natives' way of thought only served to accentuate the majesty and power of the king. /381/ It does not follow that this change made the pagan Blacks any happier, for they were awed by the ancient customs and the bloody displays of brute force.

• 671 In principle, justice was the king's justice, since as the saying goes, "the king is the law." For the sake of truthfulness, however, it must be added that there is a set of laws in existence. It is certainly not a complete code, but it nevertheless includes a series of laws and practices adding up to a veritable common law which, had it been rigorously applied, would have avoided many an extortion and cruelty. Gradually, over the centuries, a special procedure had been established for litigations bearing on property rights, inheritance rights, matrimonial rights and bride price, physical damage such as

671 theft, arson, and destruction of crops caused to a neighbor, grazing rights, the levying of taille /head tax/ and forced labor, etc. Culprits [696] of high lineage and wealthy people often extricated themselves with money and innocent people sometimes payed for offenders, especially when false witnesses were suborned.

The Pit of the Bugessera

133 Among the various torture spots such as the swamp, called 823 Nkonde in the Buberuka, the Nshimbo swamp near Lukaza, the 681 Ruboneye swamp near Nyanza, the place called "Ficus-tree spot" 696 (ku Kivumu), certain rapids of the Akanyaru and Nyabarongo rivers, etc., it was the pit of the Bugessera that left the most evil memory. Its reputation is highly sinister, owing to the illustrious offenders who were tossed into it and also to the legends that circulate about this accursed place.

The pit is located in the Bugessera region, not far from one of Lwabugiri's ancient residences, which it is surprising to find in the middle of this deserted region.

The landscape is stark, even wild, and darkened by the memory of the tragic executions it witnessed. /382/

681 The pit is a sort of depression in a rocky area (ibuye ryasamye), 696 about three or four meters deep. It is more or less filled with stagnant 823 rain water according to the time of year, and it is half choked with mud (1). Clumps of trees of various kinds make islets of greenery and

1. The Blacks like to account for the peculiarities of rocks and boulders, whose shapes and cavities invite comparisons. They tend to attribute these formations to the influence of men or demigods. They gave the name of "Bayanga's little beer boat" (umuvule) to another depression located near the preceding one and which to their eyes had that appearance. All around

614 endangered by his plans for dividing his property, for instance,
627 if he impoverishes several of his sons, the clan often steps in,
429 overrides his decision, and apportions his estate in a way that seems to it more suitable. With the disintegration of the clan and the increased power of the chief, this power passes to him, and he has the final word.

614 The rights of the individual are always sacrificed to the
423 interests of the clan. In Bugoye I even heard that all the clan property is re-apportioned if the fields have become concentrated in the hands of a minority. This re-apportioning, I was told, is called kutshura hasi.

614 At present, under increased taxation and the Batutsi supremacy,
651 it is said that sometimes clan members who cannot pay their taxes are driven out and even replaced by outsiders. The latter then participate in the tax payments which are made in common. Such instances are possible, of course, only when clan organization disintegrates.

614 The clan also protects its women. If there are daughters in a household who have no guardian after the death of their father, they are taken into their brother's house as paternal aunts.

614 The protection of female clan members does not extend to
591 their husbands, however. If husbands settle with their wife's clan
768 without being adopted, they are not regarded as equals. This happens primarily when a widow and her children remain with members of the husband's clan and she takes a man into the house. The latter can simply be driven out after the woman's death.

671 In Bahutu Ruanda, society does not protect the weak. The
614 [235] individual who is on his own, not protected by any group,
178 is without legal rights and can be oppressed and even slain by anyone. Such attacks are not punished here. In the oppression of the defenseless, they see nothing anti-social since actually it achieves better organization. This is the principal means by which the unyielding masses are united into well-organized groups. Here we cannot fail to recognize the connection between the development of the clan system and the absence of general legal norms. That is why the disintegration of clan organization caused by the Batutsi is accompanied by the establishment of universal norms, despite all the despotism that accompanies conquest. Now the individual

614 671 178 finds protection even outside the clan, which formerly was not possible.

614 Ruanda Clans. We have already listed the clans of Ruanda in Chapter 2 [not translated]. However, in view of the significance which the distribution of individual clans in the various provinces has for the history of Ruanda settlements, the list must be supplemented by further data. Here we shall also give the names of the provinces in which the individual clans were observed. (Chart on following pages)

It is said that the Baanzira clan is not represented in Kissaka, but the name is familiar, and strangely enough, it is used by the women in vows. When they wish to affirm something very positively, they say: "Aha Baanzira batshu."

Father Schumacher (1) uses the designation "Base" or "Abase"

1. Schumacher, Father P., "Die Ehe in Ruanda," Anthropos, 1910, p. 896.

for the Bagessera and Bazigaba who play a special role in the Ryangombe cult.

628 614 [237] Blood Revenge. Clans practice blood vengeance (kuhora) for their members. If an outsider kills or wounds a clan member, his fellow members take revenge on the members of the criminal's clan.

The clan's revenge, however, is not always a simple settlement on the principle of an eye for an eye and a tooth for a tooth. In Kissaka, for example, the people are satisfied if they kill a member of the murderer's clan, whereas in Mulera the vengeance is always greater than the crime. The severity of the vengeance by the injured clan depends on the number of its able-bodied men. The powerful and spirited clan of the Barashi who are settled in Mulera on Muhawura is aware of its strength and takes bitter revenge. For a murdered clansman, the Barashi kill six to eight men from the murderer's clan. The other less powerful Mulera clans content themselves with three or four. The Batutsi, on the other hand, demand as many as ten to twelve heads. The same number is exacted by the greatly feared Batwa clans.

721 Declarations of war are not made, at least not in Mulera. If a military expedition is to be undertaken, everyone knows about it long beforehand. It is hard to keep a secret. The actual declaration of war is the sound of the antelope horn calling the warriors together.

729 Baumann (1) mentions that spades wrapped with leaves are

1. Baumann, O., Durch Massailand zur Nilquelle [Through the Land of the Masai to the Source of the Nile] (Berlin, 1894), p. 84.

a sign of peace.

Chapter 13

Administration of Justice

671 Law. Ruanda has no codified laws. The administration of justice is the business of the government which takes into consideration long-established customs. This is the only kind of law one can speak of in Ruanda.

Criminal law is not developed here to such an extent that the various types of crimes must be atoned for with specific punishments. We can only indicate approximately the severity of individual punishment, since uncodified law leaves so much to the personal opinion of the judge.

628 178 The basis of justice within the clan is the institution of blood revenge. With the development of the state, this is gradually being pushed into the background, but in Ruanda the process is still in its initial stages. In Kissaka, on the other hand, it is said that before revenge is taken, the chief is notified, and he can forbid taking vengeance for a man killed for robbery.

682 685 Aside from murder, which in Ruanda proper is still punished with blood revenge, the theft of cows is very severely punished, in accordance with the role the cow has in the life of Ruanda.

suggestions there are of the effect of latter-day conceptions in superimposing themselves upon and modifying primitive law. Before going on to this, it should be added (what does not appear from the record) first, that the society of Bugufi is symbiotic, with a pastoral Tusi aristocracy, headed by a chief, dominating a semi-servile Hutu agricultural population, who largely outnumber the Tusi: secondly, that there have in Bugufi been strong forces making for change, quite apart from European administrative control. To go into these changes in detail is quite outside the scope of the present paper. It may be briefly mentioned, however, that the relative status of Tusi and Hutu is in process of rapid alteration, owing to the opportunities afforded to the Hutu under modern conditions of acquiring independent wealth, both through their labour (chiefly in Uganda) and latterly by the establishment in Bugufi of an economic crop, coffee. This change has meant maladjustment of the tribal structure. The chief sees in the economic independence of the Hutu an encroachment on his rights: and the Hutu regard the assertion of those rights as oppression. This conflict, together with the mental immaturity of the chief and the distance of the chiefdom—four days' march—from an administrative station, made it necessary for the government to establish a check in the form of a 'Native Adviser'. This system continued until early 1930, by which time an administrative station had been opened near the chief's head-quarters, and, he having shown signs of development, it was felt that an opportunity should be afforded the chief of ruling his country without the restriction of an adviser who was really a controller most of the time. These advisers, three in all, were alien to Bugufi. The first came from Bukoba, on Lake Victoria, where he later became town headman: the second was of Arab descent, having come from Urundi to live in Bugufi, where he had been settled for many years and enjoyed considerable respect: the last, a native of really fine character, who made every effort to train the chief for his work, was a Muziba from Bukoba District. All of them were charged with the dispensing of justice according to native law and custom—subject to altered concepts of crime, already imposed by the European régime, and to a general instruction to curb the oppressiveness of the chief, an instruction the interpretation of which might depend partly on the system of native law under which the adviser had been brought